THIRD DIVISION

[G.R. No. 113003. October 17, 1997]

ALBERTA YOBIDO and CRESENCIO YOBIDO, *petitioners*, *vs*. COURT OF APPEALS, LENY TUMBOY, ARDEE TUMBOY and JASMIN TUMBOY, *respondents*.

D E C I S I O N

ROMERO, *J.*:

In this petition for review on *certiorari* of the decision of the Court of Appeals, the issue is whether or not the explosion of a newly installed tire of a passenger vehicle is a fortuitous event that exempts the carrier from liability for the death of a passenger.

On April 26, 1988, spouses Tito and Leny Tumboy and their minor children named Ardee and Jasmin, boarded at Mangagoy, Surigao del Sur, a Yobido Liner bus bound for Davao City. Along Picop Road in Km. 17, Sta. Maria, Agusan del Sur, the left front tire of the bus exploded. The bus fell into a ravine around three (3) feet from the road and struck a tree. The incident resulted in the death of 28-year-old Tito Tumboy and physical injuries to other passengers.

On November 21, 1988, a complaint for breach of contract of carriage, damages and attorneys fees was filed by Leny and her children against Alberta Yobido, the owner of the bus, and Cresencio Yobido, its driver, before the Regional Trial Court of Davao City. When the defendants therein filed their answer to the complaint, they raised the affirmative defense of *caso fortuito.* They also filed a third-party complaint against Philippine Phoenix Surety and Insurance, Inc. This third-party defendant filed an answer with compulsory counterclaim. At the pre-trial conference, the parties agreed to a stipulation of facts.[1]

Upon a finding that the third party defendant was not liable under the insurance contract, the lower court dismissed the third party complaint. No amicable settlement having been arrived at by the parties, trial on the merits ensued.

The plaintiffs asserted that violation of the contract of carriage between them and the defendants was brought about by the drivers failure to exercise the diligence required of the carrier in transporting passengers safely to their place of destination. According to Leny Tumboy, the bus left Mangagoy at 3:00 oclock in the afternoon. The winding road it traversed was not cemented and was wet due to the rain; it was rough with crushed rocks. The bus which was full of passengers had cargoes on top. Since it was running fast, she cautioned the driver to slow down but he merely stared at her through the mirror. At around 3:30 p.m., in Trento, she heard something explode and immediately, the bus fell into a ravine.

For their part, the defendants tried to establish that the accident was due to a fortuitous event. Abundio Salce, who was the bus conductor when the incident happened, testified that the 42-seater bus was not full as there were only 32 passengers, such that he himself managed to get a seat. He added that the bus was running at a speed of 60 to 50 and that it was going slow because of the zigzag road. He affirmed that the left front tire that exploded was a brand new tire that he mounted on the bus on April 21, 1988 or only five (5) days before the incident. The Yobido Liner secretary, Minerva Fernando, bought the new Goodyear tire from Davao Toyo Parts on April 20, 1988 and she was present when it was mounted on the bus by Salce. She stated that all driver applicants in Yobido Liner underwent actual driving tests before they were employed. Defendant Cresencio Yobido underwent

such test and submitted his professional drivers license and clearances from the barangay, the fiscal and the police.

On August 29, 1991, the lower court rendered a decision[2] dismissing the action for lack of merit. On the issue of whether or not the tire blowout was a *caso fortuito,* it found that the falling of the bus to the cliff was a result of no other outside factor than the tire blow-out. It held that the ruling in the *La Mallorca and Pampanga Bus Co. v. De Jesus*[3] that a tire blowout is a mechanical defect of the conveyance or a fault in its equipment which was easily discoverable if the bus had been subjected to a more thorough or rigid check-up before it took to the road that morning is inapplicable to this case. It reasoned out that in said case, it was found that the blowout was caused by the established fact that the inner tube of the left front tire was pressed between the inner circle of the left wheel and the rim which had slipped out of the wheel. In this case, however, the cause of the explosion remains a mystery until at present. As such, the court added, the tire blowout was a *caso fortuito* which is completely an extraordinary circumstance independent of the will of the defendants who should be relieved of whatever liability the plaintiffs may have suffered by reason of the explosion pursuant to Article 1174[4] of the Civil Code.

Dissatisfied, the plaintiffs appealed to the Court of Appeals. They ascribed to the lower court the following errors: (a) finding that the tire blowout was a *caso fortuito*; (b) failing to hold that the defendants did not exercise utmost and/or extraordinary diligence required of carriers under Article 1755 of the Civil Code, and (c) deciding the case contrary to the ruling in *Juntilla v. Fontanar;*[5] and *Necesito v. Paras.*[6]

On August 23, 1993, the Court of Appeals rendered the Decision[7] reversing that of the lower court. It held that:

To Our mind, the explosion of the tire is not in itself a fortuitous event. The cause of the blow-out, if due to a factory defect, improper mounting, excessive tire pressure, is not an unavoidable event. On the other hand, there may have been adverse conditions on the road that were unforeseeable and/or inevitable, which could make the blow-out a caso fortuito. The fact that the cause of the blow-out was not known does not relieve the carrier of liability. Owing to the statutory presumption of negligence against the carrier and its obligation to exercise the utmost diligence of very cautious persons to carry the passenger safely as far as human care and foresight can provide, it is the burden of the defendants to prove that the cause of the blow-out was a fortuitous event. It is not incumbent upon the plaintiff to prove that the cause of the blow-out is not caso-fortuito.

Proving that the tire that exploded is a new Goodyear tire is not sufficient to discharge defendants burden. As enunciated in Necesito vs. Paras, the passenger has neither choice nor control over the carrier in the selection and use of its equipment, and the good repute of the manufacturer will not necessarily relieve the carrier from liability.

Moreover, there is evidence that the bus was moving fast, and the road was wet and rough. The driver could have explained that the blow-out that precipitated the accident that caused the death of Toto Tumboy could not have been prevented even if he had exercised due care to avoid the same, but he was not presented as witness.

The Court of Appeals thus disposed of the appeal as follows:

WHEREFORE, the judgment of the court a quo is set aside and another one entered ordering defendants to pay plaintiffs the sum of ₱50,000.00 for the death of Tito Tumboy, ₱30,000.00 in moral damages, and ₱7,000.00 for funeral and burial expenses.

SO ORDERED.

The defendants filed a motion for reconsideration of said decision which was denied on November 4, 1993 by the Court of Appeals. Hence, the instant petition asserting the position that the tire blowout that caused the death of Tito Tumboy was a *caso fortuito.* Petitioners claim further that the Court of

Appeals, in ruling contrary to that of the lower court, misapprehended facts and, therefore, its findings of fact cannot be considered final which shall bind this Court. Hence, they pray that this Court review the facts of the case.

The Court did re-examine the facts and evidence in this case because of the inapplicability of the established principle that the factual findings of the Court of Appeals are final and may not be reviewed on appeal by this Court. This general principle is subject to exceptions such as the one present in this case, namely, that the lower court and the Court of Appeals arrived at diverse factual findings.[8] However, upon such re-examination, we found no reason to overturn the findings and conclusions of the Court of Appeals.

As a rule, when a passenger boards a common carrier, he takes the risks incidental to the mode of travel he has taken. After all, a carrier is not an insurer of the safety of its passengers and is not bound absolutely and at all events to carry them safely and without injury.[9] However, when a passenger is injured or dies while travelling, the law presumes that the common carrier is negligent. Thus, the Civil Code provides:

> Art. 1756. In case of death or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.

Article 1755 provides that (a) common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances. Accordingly, in *culpa contractual*, once a passenger dies or is injured, the carrier is presumed to have been at fault or to have acted negligently. This disputable presumption may only be overcome by evidence that the carrier had observed extraordinary diligence as prescribed by Articles 1733,[10] 1755 and 1756 of the Civil Code or that the death or injury of the passenger was due to a fortuitous event.[11] Consequently, the court need not make an express finding of fault or negligence on the part of the carrier to hold it responsible for damages sought by the passenger.[12]

In view of the foregoing, petitioners contention that they should be exempt from liability because the tire blowout was no more than a fortuitous event that could not have been foreseen, must fail. A fortuitous event is possessed of the following characteristics: (a) the cause of the unforeseen and unexpected occurrence, or the failure of the debtor to comply with his obligations, must be independent of human will; (b) it must be impossible to foresee the event which constitutes the *caso fortuito*, or if it can be foreseen, it must be impossible to avoid; (c) the occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the obligor must be free from any participation in the aggravation of the injury resulting to the creditor.[13] As Article 1174 provides, no person shall be responsible for a fortuitous event which could not be foreseen, or which, though foreseen, was inevitable. In other words, there must be an entire exclusion of human agency from the cause of injury or loss.[14]

Under the circumstances of this case, the explosion of the new tire may not be considered a fortuitous event. There are human factors involved in the situation. The fact that the tire was new did not imply that it was entirely free from manufacturing defects or that it was properly mounted on the vehicle. Neither may the fact that the tire bought and used in the vehicle is of a brand name noted for quality, resulting in the conclusion that it could not explode within five days use. Be that as it may, it is settled that an accident caused either by defects in the automobile or through the negligence of its driver is not a *caso fortuito* that would exempt the carrier from liability for damages.[15]

Moreover, a common carrier may not be absolved from liability in case of *force majeure* or fortuitous event alone. The common carrier must still prove that it was *not* negligent in causing the death or injury resulting from an accident.[16] This Court has had occasion to state:

While it may be true that the tire that blew-up was still good because the grooves of the tire were still visible, this fact alone does not make the explosion of the tire a fortuitous event. No evidence was presented to show that the accident was due to adverse road conditions or that precautions were taken by the jeepney driver to compensate for any conditions liable to cause accidents. The sudden blowing-up, therefore, could have been caused by too much air pressure injected into the tire coupled by the fact that the jeepney was overloaded and speeding at the time of the accident.[17]

It is interesting to note that petitioners proved through the bus conductor, Salce, that the bus was running at 60-50 kilometers per hour only or within the prescribed lawful speed limit. However, they failed to rebut the testimony of Leny Tumboy that the bus was running so fast that she cautioned the driver to slow down. These contradictory facts must, therefore, be resolved in favor of liability in view of the presumption of negligence of the carrier in the law. Coupled with this is the established condition of the road rough, winding and wet due to the rain. It was incumbent upon the defense to establish that it took precautionary measures considering partially dangerous condition of the road. As stated above, proof that the tire was new and of good quality is not sufficient proof that it was *not* negligent. Petitioners should have shown that it undertook extraordinary diligence in the care of its carrier, such as conducting daily routinary check-ups of the vehicles parts. As the late Justice J.B.L. Reyes said:

It may be impracticable, as appellee argues, to require of carriers to test the strength of each and every part of its vehicles before each trip; but we are of the opinion that a due regard for the carriers obligations toward the traveling public demands adequate periodical tests to determine the condition and strength of those vehicle portions the failure of which may endanger the safety of the passengers.[18]

Having failed to discharge its duty to overthrow the presumption of negligence with clear and convincing evidence, petitioners are hereby held liable for damages. Article 1764[19] in relation to Article 2206[20] of the Civil Code prescribes the amount of at least three thousand pesos as damages for the death of a passenger. Under prevailing jurisprudence, the award of damages under Article 2206 has been increased to fifty thousand pesos (₱50,000.00).[21]

Moral damages are generally not recoverable in *culpa contractual* except when bad faith had been proven. However, the same damages may be recovered when breach of contract of carriage results in the death of a passenger,[22] as in this case. Exemplary damages, awarded by way of example or correction for the public good when moral damages are awarded,[23] may likewise be recovered in contractual obligations if the defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner.[24] Because petitioners failed to exercise the extraordinary diligence required of a common carrier, which resulted in the death of Tito Tumboy, it is deemed to have acted recklessly.[25] As such, private respondents shall be entitled to exemplary damages.

WHEREFORE, the Decision of the Court of Appeals is hereby **AFFIRMED** subject to the modification that petitioners shall, in addition to the monetary awards therein, be liable for the award of exemplary damages in the amount of ₱20,000.00. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and *Panganiban, JJ.,* concur.

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[1] Record, pp. 77-78.

[2] Penned by Judge William M. Layague.

[3] 123 Phil. 875 (1966).

[4] Art. 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.

[5] L-45637, May 31, 1985, 136 SCRA 624.

[6] 104 Phil. 75 (1958).

[7] Penned by Associate Justice Minerva P. Gonzaga-Reyes and concurred in by Associate Justices Vicente V. Mendoza and Pacita Caizares-Nye.

[8] Philippine Rabbit Bus Lines, Inc. *v*. IAC, G.R. Nos. 66102-04, August 30, 1990, 189 SCRA 158, 159.

[9] TOLENTINO, CIVIL CODE OF THE PHILIPPINES, Vol. V, 1992 ed., p. 312.

[10] Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756.

[11] Phil. Rabbit Bus Lines, Inc. *vs*. IAC, *supra,* at pp. 171-172 citing Lasam *v*. Smith, Jr., 45 Phil. 657 (1924).

[12] Batangas Trans. Co. *v*. Caguimbal, 130 Phil. 166, 171 (1968) citing Brito Sy *v*. Malate Taxicab & Garage, Inc., 102 Phil. 482 (1957).

[13] Metal Forming Corp. *v*. Office of the President, 317 Phil. 853, 859 (1995); Vasquez *v*. Court of Appeals, L-42926, September 13, 1985, 138 SCRA 553, 557 citing Lasam *v*. Smith, *supra* at p. 661 and Austria v. Court of Appeals, 148-A Phil. 462 (1971); Estrada *v*. Consolacion, L-40948, June 29, 1976, 71 SCRA 523,530; Republic of the Phil. *v*. Luzon Stevedoring Corporation, 128 Phil. 313 (1967).

[14] Vasquez *v*. Court of Appeals, *supra,* at p. 557.

[15] Son *v*. Cebu Autobus Co., 94 Phil. 893, 896 (1954) citing Lasam *v*. Smith, *supra*.

[16] Bachelor Express, Inc. *v*. Court of Appeals, G.R. No. 85691, July 31, 1990, 188 SCRA 216, 222-223.

[17] Juntilla *v*. Fontanar, *supra*, at p. 630.

[18] Necesito *v*. Paras, *supra* at p. 82.

[19] Art. 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

[20] Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. x x x.

[21] Sulpicio Lines, Inc. *v*. Court of Appeals, 316 Phil. 455, 460 (1995) citing People *v*. Flores, G.R. Nos. 103801-02, October 19, 1994, 237 SCRA 653.

[22] Sulpicio Lines, Inc. *v*. Court of Appeals, *supra* at pp. 460-461 citing Trans World Air Lines *v*. Court of Appeals, G.R. No. 78656, August 30, 1988, 165 SCRA 143; Philippine Rabbit Bus Lines, Inc. *v*. Esguerra, 203 Phil. 107 (1982) and Vasquez *v*. Court of Appeals, *supra.*

[23] Art. 2229, Civil Code.

[24] Art. 2232, *supra.*

[25] Sulpicio Lines, Inc. *v*. Court of Appeals, *supra* at p. 461.